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Attorneys for Plaintiff
UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

UNITED STATES OF AMERICA,

)
)

| | | |
|------------------------------|---|-------------------------|
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | |
| TRIPLE DRAGON LLC, |) | |
| TRUNG ANH QUACH, and |) | COMPLAINT |
| AUKUSITINO LUI MAUIA, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

COMPLAINT

Plaintiff, the United States of America, acting at the request of the United States Coast Guard, files this Complaint and alleges the following:

NATURE OF THE ACTION

1. This is a civil action brought by the United States against Triple Dragon LLC, Trung Anh Quach, and Aukusitino Lui Mauia (collectively “Defendants”), seeking civil penalties and injunctive relief for numerous violations of Section 311 of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1321. The Complaint addresses Defendants’ willful discharges of oil, including oily bilge waste, from the commercial fishing vessel *Triple Dragon* into the ocean offshore of Hawaii and Defendants’ related violations of the Coast Guard’s pollution control regulations.

JURISDICTION, AUTHORITY, AND VENUE

2. This Court has jurisdiction over this matter pursuant to Section 311(b)(7)(E), (e), and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E), (e), and (n), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Authority to bring this action is vested in the United States Department of Justice by, *inter alia*, 28 U.S.C. §§ 516 and 519.

4. Venue is proper in this District pursuant to Section 311(b)(7)(E), (e), and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E), (e), and (n), and 28 U.S.C. §§ 1391 and 1395(a), because the claims arose in this district and Defendants reside and do business in this district.

DEFENDANTS

5. Defendant Triple Dragon LLC is a Hawaii limited liability company with its business address and registered agent in Honolulu, Hawaii. The company owns the U.S.-flagged *Triple Dragon* (Official Number: 913733). The *Triple Dragon* is homeported in Honolulu and authorized to fish for species such as tuna and swordfish. The vessel measures approximately 78 feet long and is approximately 107 gross tons. The vessel is configured for longline fishing.

6. Defendant Trung Anh Quach (“Quach”) is the managing member of Triple Dragon LLC. Quach operates and is a person in charge of the *Triple Dragon*

and is a responsible corporate officer for the CWA violations alleged in this Complaint. Quach resides in Honolulu, Hawaii.

7. Defendant Aukusitino Lui Mauia (“Mauia”) acted as “captain” of the *Triple Dragon* and was an operator and person in charge of the vessel at times relevant to this Complaint. Mauia resides in Honolulu, Hawaii.

FACTS

8. Triple Dragon LLC has owned the vessel since July 2012.

9. The *Triple Dragon* has a history of violations of the Coast Guard’s pollution control regulations.

10. At all times relevant to this Complaint, Quach operated and was the person in charge of Triple Dragon LLC and the *Triple Dragon*. He managed the operations of the *Triple Dragon*, handled matters related to crewmember immigration status, purchased equipment for the vessel, scheduled fishing voyages, and coordinated the sale of the catch.

11. Quach hired Mauia to operate the *Triple Dragon* for a fishing voyage that occurred in February 2017.

12. Quach had reason to know before November 1, 2016, that the *Triple Dragon* lacked the equipment and capacity to retain oily mixtures generated while underway and that the *Triple Dragon* regularly discharged oil overboard during voyages.

13. Quach nonetheless directed the *Triple Dragon* to get underway for fishing voyages between November 1, 2016, and February 28, 2017.

14. Quach had responsibility and authority to prevent or promptly correct the violations alleged in this Complaint.

15. Quach failed to take action to correct the violations alleged in this Complaint.

The February 2017 Fishing Voyage

16. On or about February 2, 2017, the *Triple Dragon* left port with six persons on board to fish for tuna.

17. Mauia acted as captain of the *Triple Dragon* and directed the crew's work and conduct during the February 2017 fishing voyage.

18. Fuel oil and lube oil routinely leaked from machinery into the *Triple Dragon's* engine room bilge. Water and other waste fluids that entered the engine room bilge commingled with the oil and formed an oily mixture.

19. Pathways for excess water to enter the engine room included a corroded and deteriorated metal bulkhead and a drain pipe that allowed free flow of fluids between the engine room bilge and the fish hold.

20. When ice melted in the vessel's fish hold, water flowed through the drain pipe and other holes in the bulkhead into the engine room bilge. Bilge water

containing oily waste and other bilge contaminants could also flow from the engine room into the fish hold.

21. Substantial amounts of water from ice melt regularly flowed into the engine room bilge.

22. Crewmembers showered in the engine room and allowed soap and shower water to drain into the bilge. Crewmembers discharged the bilge's contents, including oily mixtures, overboard after showering.

23. Crewmembers cleaned their clothing in the engine room and discarded the soapy water into the engine room bilge. Crewmembers discharged the bilge's contents, including oily mixtures, overboard after washing clothes.

24. Crewmembers during the February 2017 voyage, including Mauia, used a portable electric water pump and flexible hose to illegally discharge oil, including oily mixtures, and other waste in the *Triple Dragon's* engine room bilge overboard one or more times per day.

25. Subject to reasonable opportunity for further investigation or discovery, oil, including oily mixtures, was routinely discharged overboard during previous fishing voyages, including voyages that occurred between November 1, 2016, and January 31, 2017.

Coast Guard Law Enforcement Boarding

26. At approximately 2:45 p.m. on February 27, 2017, a law enforcement team from the Coast Guard Cutter *Kittiwake* conducted an at-sea boarding of the *Triple Dragon* as she was returning to port. The boarding occurred about 0.75 nautical miles off the Hawaiian coast, near Honolulu's Kewalo Basin Harbor.

27. The Coast Guard boarding team discovered a portable electric water pump in the vessel's engine room bilge. The pump had a discharge rate of 64 gallons per minute.

28. Attached to the pump was a flexible hose that ran from the engine room up to the *Triple Dragon*'s exterior weather deck and overboard.

29. Waste oil was clearly visible on the engine room deck, hoses, and piping. About 30 gallons of water was present in the engine room bilge with an oily emulsion on its surface.

30. Coast Guard officers discovered large quantities of detergents and other soaps in the engine room, which when added to oily water act as a dispersant or emulsifier and serve to mask the visible presence of oil on the surface of the water.

31. The *Triple Dragon* did not have an oil-water separating system on board, and the *Triple Dragon* lacked the capacity to store the quantity of oily mixtures generated on a typical fishing voyage.

32. The *Triple Dragon* did not have the requisite equipment and piping to pump oily mixtures to shore reception facilities after returning to port.

33. Crewmembers, including Mauia, told Coast Guard officers that during the February 2017 voyage they discharged the engine room bilge overboard in accordance with practices established on previous voyages.

34. During the inspection, the Coast Guard also identified a number of violations of longstanding pollution control regulations, including: failure to have the capacity to store oily mixtures on board, failure to install equipment for proper oily mixture discharge, failure to display a lawful “Discharge of Oil Prohibited” placard, and failure to have a garbage management plan.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Civil Penalties for Violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3) – Discharges of Oil

35. The preceding paragraphs are incorporated herein.

36. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil “into or upon,” *inter alia*, “the navigable waters of the United States . . . the contiguous zone . . . or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act) in such quantities as may be harmful”

37. Congress directed the President to determine by regulation “those quantities of oil and any hazardous substance the discharge of which may be harmful to public health or welfare or the environment of the United States.” 33 U.S.C. § 1321(b)(4). The President delegated authority to the Administrator of the Environmental Protection Agency under CWA § 311(b)(3) and (b)(4) for determining quantities of oil the discharge of which may be harmful. Exec. Order No. 12777, Section 8(a), 56 Fed. Reg. 54757, 54768 (1991). The EPA determined that discharges of oil that “violate applicable water quality standards, or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines” are, for purposes of Section 311(b)(4) of the CWA, discharges of oil in such quantities that may be harmful to the public health or welfare or the environment of the United States. 40 C.F.R. § 110.3.

38. It is unlawful to circumvent EPA’s harmful quantity determination by adding “dispersants or emulsifiers to oil to be discharged.” 40 C.F.R. § 110.4.

39. Pursuant to Section 311(b)(7)(A) of the CWA, “[a]ny person who is the owner, operator, or person in charge of any vessel . . . from which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty” 33 U.S.C. § 1321(b)(7)(A).

40. Civil penalties will be increased pursuant to Section 311(b)(7)(D) of the CWA if the violation results from “gross negligence or willful misconduct.” 33 U.S.C. § 1321(b)(7)(D).

41. Defendants are each a “person” within the meaning of Section 311(a)(7) of the CWA. 33 U.S.C. § 1321(a)(7).

42. Defendants are the owner, operator, and person in charge of the vessel from which oil was discharged within the meaning of Section 311(a)(6) of the CWA. 33 U.S.C. § 1321(a)(6). Quach also is a responsible corporate officer for these CWA violations.

43. The *Triple Dragon* is a “vessel” within the meaning of Section 311(a)(3) of the CWA. 33 U.S.C. § 1321(a)(3).

44. Each incident in which the *Triple Dragon* pumped oily mixtures overboard constitutes a “discharge” of oil within the meaning of Section 311(a)(2). 33 U.S.C. § 1321(a)(2). For the purposes of Section 311(a)(2) of the CWA, “discharge” is defined to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . . ,” subject to certain specified exceptions not applicable here. 33 U.S.C. § 1321(a)(2).

45. The discharges were of “oil” within the meaning of Section 311(a)(1) of the CWA. 33 U.S.C. § 1321(a)(1).

46. Oil discharges were into or upon the ocean offshore of Hawaii, including the exclusive economic zone (“EEZ”).

47. Multiple discharges occurred while the *Triple Dragon* was fishing in and traveling through the habitat of numerous types of natural resources. The oil discharges may have affected natural resources, including water, fish, dolphins, sea turtles, whales, sharks, birds, and biota, belonging to, appertaining to, or under the United States’ exclusive management authority.

48. Discharging oil into and upon waters that these species inhabit is known to cause them harm.

49. The oil discharges were in a quantity “as may be harmful” within the meaning of Section 311(b)(3) and (4) of the CWA, 33 U.S.C. § 1321(b)(3)-(4), and 40 C.F.R. § 110.3. Moreover, soap and other dispersants were added to the engine room bilge prior to the discharges.

50. The oil discharges violated Section 311(b)(3) of the CWA. 33 U.S.C. § 1321(b)(3).

51. The oil discharges resulted from Defendants’ willful misconduct or gross negligence. Defendants knew discharging oily mixtures overboard is unlawful.

52. Defendants are each liable for civil penalties of up to \$46,192 per day of violation or \$1,848 per barrel discharged under CWA Section 311(b)(7)(A), or

under Section 311(b)(7)(D) if it is proved that the violations are the result of gross negligence or willful misconduct, a minimum of \$184,767 and up to \$5,543 per barrel discharged. *See* 33 U.S.C. § 1321(b)(7)(A) and (D); *see also* 83 Fed. Reg. 1193 (Jan. 10, 2018) (presenting these inflation-adjusted penalty amounts effective after January 15, 2018, for violations that occur after November 2, 2015).

SECOND CAUSE OF ACTION

Civil Penalties for Regulatory Violations under CWA Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C) – Failure to Have Capacity to Retain Oily Mixtures Onboard and Failure to Equip Vessel to Discharge Oily Mixtures to a Reception Facility

53. The preceding paragraphs are incorporated herein.

54. Any person who fails or refuses to comply with any regulation issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), shall be subject to a civil penalty of up to \$46,192 per day for each violation pursuant to Section 311(b)(7)(C). 33 U.S.C. § 1321(b)(7)(C); *see also* 83 Fed. Reg. 1193 (Jan. 10, 2018) (presenting this inflation-adjusted penalty amount effective after January 15, 2018, for violations that occur after November 2, 2015).

55. The Coast Guard has promulgated pollution control regulations under the authority of Section 311(j) of the CWA, including 33 C.F.R. § 155.350. Pursuant to 33 C.F.R. § 155.350, no person may operate an oceangoing vessel less than 400 gross tons unless the vessel: (1) “[h]as the capacity to retain on board all

oily mixtures and is equipped to discharge these oily mixtures to a reception facility;” or (2) “[h]as approved oily-water separating equipment”

56. The *Triple Dragon* is less than 400 gross tons.

57. The *Triple Dragon* does not have an oil-water separating system on board.

58. Defendants operated the *Triple Dragon* between at least November 1, 2016, and February 28, 2017, without the capacity to retain on board the oily mixtures generated during fishing voyages and without equipment and piping needed to pump oily mixtures to a shore reception facility after returning to port.

59. Defendants are each liable for civil penalties of up to \$46,192 per day for each violation under Section 311(b)(7)(C) of the CWA.

THIRD CAUSE OF ACTION

Civil Penalties for Regulatory Violations under CWA Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C) – Failure to Comply with Oily Mixture Discharge Equipment Requirement

60. The preceding paragraphs are incorporated herein.

61. Any person who fails or refuses to comply with any regulation issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), shall be subject to a civil penalty of up to \$46,192 per day for each violation pursuant to Section 311(b)(7)(C). 33 U.S.C. § 1321(b)(7)(C); *see also* 83 Fed. Reg. 1193 (Jan. 10,

2018) (presenting this inflation-adjusted penalty amount effective after January 15, 2018, for violations that occur after November 2, 2015).

62. The Coast Guard has promulgated pollution control regulations under the authority of Section 311(j) of the CWA, including 33 C.F.R. § 155.420. Pursuant to 33 C.F.R. § 155.420, no person may operate an oceangoing vessel that is fitted with main or auxiliary machinery spaces and is 100 tons and above but less than 400 tons unless, *inter alia*, “[t]he ship has at least one pump installed to discharge oily mixtures through a fixed piping system to a reception facility” or the ship is equipped with oily-water separating equipment.

63. The *Triple Dragon*’s engine room is a main machinery space.

64. The *Triple Dragon* is 107 gross tons.

65. The *Triple Dragon* does not have an oil-water separating system on board.

66. Defendants operated the *Triple Dragon* between at least November 1, 2016, and February 28, 2017, without an installed pump or fixed piping system to discharge oily mixtures to a reception facility.

67. Defendants are each liable for civil penalties of up to \$46,192 per day for each violation under Section 311(b)(7)(C) of the CWA.

FOURTH CAUSE OF ACTION

Civil Penalties for Regulatory Violations under CWA Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C) – Failure to Display a Proper Oil Discharge Placard

68. The preceding paragraphs are incorporated herein.

69. Any person who fails or refuses to comply with any regulation issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), shall be subject to a civil penalty of up to \$46,192 per day for each violation pursuant to Section 311(b)(7)(C). 33 U.S.C. § 1321(b)(7)(C); *see also* 83 Fed. Reg. 1193 (Jan. 10, 2018) (presenting this inflation-adjusted penalty amount effective after January 15, 2018, for violations that occur after November 2, 2015).

70. The Coast Guard has promulgated pollution control regulations under the authority of Section 311(j) of the CWA, including 33 C.F.R. § 155.450. Pursuant to 33 C.F.R. § 155.450, a vessel 26 feet in length or greater must conspicuously display in each machinery space or at the bilge and ballast pump control station a “Discharge of Oil Prohibited” placard printed in the language or languages understood by the crew.

71. The *Triple Dragon* is 78 feet in length.

72. On February 27, 2017, a Coast Guard boarding team found on the *Triple Dragon* a “Discharge of Oil Prohibited” placard printed in English and no other language.

73. The *Triple Dragon* did not display a “Discharge of Oil Prohibited” placard written in a language other than English between at least November 1, 2016, and February 28, 2017.

74. Subject to a reasonable opportunity for further investigation or discovery, foreign crewmembers working aboard the *Triple Dragon* between November 1, 2016, and February 28, 2017, were unable to read English.

75. Defendants failed to comply with the requirement to display a “Discharge of Oil Prohibited” placard printed in a language or languages understood by the crew. 33 C.F.R. § 155.450(c).

76. Defendants are each liable for civil penalties of up to \$46,192 per day for each violation under Section 311(b)(7)(C) of the CWA.

FIFTH CAUSE OF ACTION

Civil Penalties for Regulatory Violations under CWA Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C) – Failure to Have or Follow a Garbage Management Plan

77. The preceding paragraphs are incorporated herein.

78. Any person who fails or refuses to comply with any regulation issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), shall be subject to a civil penalty of up to \$46,192 per day for each violation pursuant to Section 311(b)(7)(C). 33 U.S.C. § 1321(b)(7)(C); *see also* 83 Fed. Reg. 1193 (Jan. 10,

2018) (presenting this inflation-adjusted penalty amount effective after January 15, 2018, for violations that occur after November 2, 2015).

79. The Coast Guard has promulgated pollution control regulations under the authority of Section 311(j), including 33 C.F.R. § 151.57. Pursuant to 33 C.F.R. § 151.57, a manned oceangoing ship of 40 feet in length or greater that is documented under United States law and equipped with a galley and berthing must have a written garbage management plan. *See also* 33 C.F.R. § 151.51(d). The plan must describe procedures for “minimizing, collecting, processing, storing, and discharging garbage,” and it must “designate the person who is in charge of carrying out the plan.”

80. The *Triple Dragon* is 78 feet in length.

81. The *Triple Dragon* is documented under United States law (official number 913733).

82. The *Triple Dragon* has a galley and berthing.

83. On February 27, 2017, a Coast Guard boarding team found only a generic garbage management plan on board. The plan failed to describe the *Triple Dragon*’s process for collecting, processing, and storing garbage, and it identified an individual who had not been on board the vessel since 2014 as the person in charge of the plan.

84. The *Triple Dragon* did not have a lawful garbage management plan on board between at least November 1, 2016, and February 28, 2017.

85. Defendants failed to comply with the requirement to have a garbage management plan on board. 33 C.F.R. § 151.57.

86. Defendants are each liable for civil penalties of up to \$46,192 per day for each violation under Section 311(b)(7)(C) of the CWA.

SIXTH CAUSE OF ACTION

Injunctive Relief under CWA Section 311(e), 33 U.S.C. § 1321(e)

87. The preceding paragraphs are incorporated herein.

88. In addition to civil penalties for the violations identified above, the United States seeks injunctive relief to prevent future discharges of oil from the *Triple Dragon* and other violations. Section 311(e) of the CWA authorizes the Coast Guard to act when it determines there “may be an imminent and substantial threat to the public health or welfare of the United States . . . because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b).” 33 U.S.C. § 1321(e).

89. Section 311(e)(1)(A) of the Act authorizes the Attorney General to secure “any relief from any person . . . as may be necessary to abate such endangerment.” 33 U.S.C. § 1321(e)(1)(A). District courts have “jurisdiction to

grant any relief under this subsection that the public interest and the equities of the case may require.” 33 U.S.C. § 1321(e)(2).

90. Defendants’ repeated illegal practice of discharging oil into the ocean from the *Triple Dragon*’s engine room bilge poses an imminent and substantial threat of injury to natural resources and to public health or welfare. Such practice is likely to continue unless corrective measures are imposed by the Court.

REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court:

A. Assess civil penalties against each Defendant for the oil discharge violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), in the amount of up to \$46,192 per day of violation or \$1,848 per barrel discharged under CWA Section 311(b)(7)(A) or, if it is proved that the violations are the result of gross negligence or willful misconduct, in the amount of at least \$184,767 and up to \$5,543 per barrel discharged under Section 311(b)(7)(D);

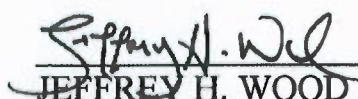
B. Assess civil penalties against each Defendant of up to \$46,192 per day for each violation of the Coast Guard’s pollution control regulations promulgated pursuant to CWA Section 311(j), as authorized under Section 311(b)(7)(C);

C. Enjoin Defendants from continuing their illegal oil discharges and order Defendants to perform other appropriate injunctive relief to prevent future oil discharges and related violations;

D. Order Defendants to take all steps necessary to redress or mitigate the impacts of their violations; and

E. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,


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